



INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-1218]

Certain Variable Speed Wind Turbine Generators and Components Thereof; Notice of the Commission's Final Determination Finding a Violation of Section 337; Issuance of a Limited Exclusion Order and Cease and Desist Orders; Termination of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has found a violation of section 337 of the Tariff Act of 1930, as amended, by Siemens Gamesa Renewable Energy Inc.; Siemens Gamesa Renewable Energy A/S; and Gamesa Electric, S.A.U., and has determined to issue a limited exclusion order and cease and desist orders. The investigation is terminated.

FOR FURTHER INFORMATION CONTACT: Robert Needham, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 708-5468. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email EDIS3Help@usitc.gov. General information concerning the Commission may also be obtained by accessing its Internet server (<https://www.usitc.gov>). Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal, telephone (202) 205-1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on September 8, 2020, based on a complaint filed on behalf of General Electric Company of Boston, Massachusetts ("GE"). 85 FR 55492-93 (Sept. 8, 2020). The complaint, as supplemented, alleged violations of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, based upon the importation into the United States, the sale for importation, and the

sale within the United States after importation of certain variable speed wind turbine generators and components thereof by reason of infringement of one or more of claims 1, 3, 6, 7, 12, 15-16, 21-24, 29, 30, and 33-38 of U.S. Patent No. 6,921,985 (“the ’985 patent”) and claims 1 and 2 of the U.S. Patent No. 7,629,705 (“the ’705 patent”). *Id.* at 55493; Order No. 10 (Dec. 2, 2020), *unreviewed by* Comm’n Notice (Dec. 22, 2020). *Id.* The Commission’s notice of investigation named as respondents Siemens Gamesa Renewable Energy Inc. of Orlando, Florida; Siemens Gamesa Renewable Energy A/S of Brande, Denmark; and Gamesa Electric, S.A.U. of Zamudio, Spain (collectively, “SGRE”). *Id.* at 26493; 85 FR 55493. The Office of Unfair Import Investigations is not a party to the investigation. *Id.*

The Commission subsequently terminated the investigation with respect to claims 3, 7, 15, 16, 21-24, 36, and 38 of the ’985 patent and claim 2 of the ’705 patent based on GE’s partial withdrawal of the complaint. Order No. 20 (Mar. 30, 2021), *unreviewed by* Comm’n Notice (Apr. 15, 2021) (terminating the investigation with respect to claims 3, 7, 36, and 38 of the ’985 patent and claim 2 of the ’705 patent); Order No. 24 (Apr. 26, 2021), *unreviewed by* Comm’n Notice (May 17, 2021) (terminating the investigation with respect to claims 15, 16, and 21-24 of the ’985 patent). Accordingly, at the time of the Final ID, the remaining asserted claims were claims 1, 6, 12, 29, 30, 33-35, and 37 of the ’985 patent and claim 1 of the ’705 patent.

The Commission also issued a summary determination that GE satisfied the economic prong of the domestic industry requirement with respect to both asserted patents. Order No. 23 (Apr. 26, 2021), *unreviewed by* Comm’n Notice (May 26, 2021).

On September 10, 2021, the ALJ issued a final initial determination (“Final ID”) finding a violation of section 337 with respect to claims 1, 6, 12, 29, 30, 33-35, and 37 of the ’985 patent and finding no violation with respect to claim 1 of the ’705 patent. Final ID at 147. The Final ID found that GE showed that SGRE induced infringement of

claims 1, 6, 12, 29, 30, 33-35, and 37 of the '985 patent and claim 1 of the '705 patent, and that GE showed that it satisfied the technical prong of the domestic industry requirement with respect to both patents. The Final ID also found that SGRE showed that claim 1 of the '705 patent is directed to ineligible subject matter but failed to show that any asserted claim of the '985 patent is invalid or patent ineligible.

On September 22 and 24, 2021, GE and SGRE, respectively, filed petitions for review of the Final ID. GE and SGRE opposed each other's petitions on September 30, 2021, and October 4, 2021, respectively.

On November 12, 2021, the Commission determined to review the Final ID in part. Specifically, the Commission determined to review the following issues: (1) the Final ID's finding that the accused products satisfy the limitation "a second mode of operation comprising the low voltage event" of claims 1, 6, and 12 of the '985 patent; (2) the Final ID's finding that the accused turbines having a doubly-fed induction generator ("DFIG") satisfy the limitation "turbine controller causes the blade pitch control system to vary the pitch of the one or more blades" of claims 1, 6, and 12 of the '985 patent; (3) the Final ID's finding that certain full-converter turbines with later versions of software and DFIG Products infringe claims 29, 30, 33-35, and 37 of the '985 patent; and (4) the Final ID's finding that the accused products satisfy the limitation "during the entire duration of and subsequent to a zero voltage fault that lasts for an undetermined period of time" of claim 1 of the '705 patent. The Commission also determined to take no position on whether GE showed that the accused products satisfy the limitation "during the entire duration of and subsequent to a zero voltage fault that lasts for an undetermined period of time," and therefore affirmed the Final ID's finding of no violation as to claim 1 of the '705 patent based on 35 U.S.C. 101. The Commission did not review any other findings presented in the final ID.

The Commission sought briefing from the parties on six issues and requested

briefing from the parties, interested government agencies, and interested persons on remedy, bonding, and the public interest. On December 7, 2021, GE and SGRE filed their initial submissions in response to the Commission's request for briefing. On December 14, 2021, GE and SGRE filed their reply submissions in response to the Commission's request for briefing. The Commission also received submissions from U.S. Representative Paul Tonko; U.S. Representative William Timmons; Senator Patrick Leahy; Senator Tim Scott; Senators John Hoeven, Kevin Cramer, and Kelly Armstrong; Senators Charles Grassley and Joni Ernst; Governor Kim Reynolds of Iowa; Governor Laura Kelly of Kansas; RWE Renewables Americas, LLC; Enel Green Power North America, Inc.; Avangrid Renewables, LLC; Allete Clean Energy; Clearway Energy Group, LLC; Algonquin Power & Utilities Corp.; and MidAmerican Energy Company.

Having examined the record of this investigation, including the Final ID, the petitions for review, responses, and other submissions from the parties and the public, the Commission has determined that GE failed to show any accused SGRE products satisfies the limitation "a second mode of operation comprising the low voltage event" found in claims 1, 6, and 12 of the '985 patent. The Commission has further determined that GE failed to show that the accused SGRE DFIG products satisfy the limitation "turbine controller causes the blade pitch control system to vary the pitch of the one or more blades" of claims 1, 6, and 12 of the '985 patent. Finally, the Commission finds that GE showed that the accused full-converter wind turbine generators with earlier versions of software infringe claims 29, 30, 33-35, and 37 of the '985 patent, but that GE did not show that the accused DFIG wind turbines generators or the accused full-converter wind turbine generators with later versions of software infringed those claims. The Commission therefore reverses the Final ID's finding that SGRE infringes claims 1, 6, and 12 of the '985 patent, but finds that GE showed infringement of claims 29, 30, 33-35, and 37 of the '985 patent by the accused full-converter wind turbine generators with

earlier versions of software. Accordingly, the Commission finds that GE has shown a violation of section 337 by SGRE with respect to claims 29, 30, 33-35, and 37 of the '985 patent.

The Commission's determinations are explained more fully in the accompanying Opinion. All other findings in the ID under review that are consistent with the Commission's determinations are affirmed.

The Commission has determined that the appropriate form of relief in this investigation is a limited exclusion order with respect to SGRE prohibiting the importation of certain variable speed wind turbine generators and components thereof that are covered by one or more of claims 29, 30, 33-35, and 37 of the '985 patent, and cease and desist orders that prohibits SGRE from further importing, selling, and distributing those products in the United States. The Commission has further determined that the public interest factors enumerated in subsection 337(d)(1) and (f)(1) (19 U.S.C. 1337(d)(1) and (f)(1)) warrant an exemption in both orders for the service and repair of subject articles that were sold to U.S. consumers as of the date of the orders, but do not otherwise preclude the issuance of the limited exclusion order or the cease and desist orders. Finally, the Commission has determined that the bond for importation during the period of Presidential review shall be in the amount of zero percent (0%) (*i.e.*, no bond) of the entered value of such articles.

The Commission's notice, order, and opinion were delivered to the President and to the United States Trade Representative on the day of their issuance. The Commission has also notified the Secretary of the Treasury and Customs and Border Protection of the order. The investigation is hereby terminated.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: January 18, 2022.

Lisa Barton,

Secretary to the Commission.

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